

**REMARKS****35 U.S.C. §102(e) Rejection:**

The Office Action rejected claims 1-3 and 6-10 as being anticipated by Tribble. The Applicant respectfully traverses the rejection as the claimed invention is patentably distinguishable from Tribble.

It is well known that bat barrels and bat handles are composed of either wood, metal or composite materials. It is further understood that where the bat barrel or bat handle is hollow the barrel or handle is made of a metal or composite material. For example, the following patents cited in the Specification and the Information Disclosure Statement by Applicant refer to hollow metal bats: (1) the ball bat of the invention of Filice (Patent No. 5,593,158) comprises a hollow barrel and hollow handle in which the barrel and handle are formed of either a metal (such as aluminum alloy) or composite material (See Filice Spec., Col. 2, lines 31,32, Col. 3 lines 62,63 and Col. 4, lines 7,8; 15-18); (2) the ball bat of the invention of Fuji (Patent No. 3,963,239) discloses a substantially hollow metallic bat (See Fuji Spec., Col. 4, line 26) and (3) the ball bat invention of Fuji (Patent No. 3,861,682) also discloses a substantially hollow metallic bat (See Fuji Spec., Col. 4, line 30).

The present invention discloses a ball bat having a hollow handle and a barrel having varying wall thicknesses. See Spec., page 10. Accordingly, it is understood that the ball bat of the present invention is comprised of a hollow barrel and a hollow handle, and that the barrel and the handle are formed of a metal or composite material. )

Tribble, to the contrary, discloses a bat having a solid wood barrel attached to a hollow metal handle. See Tribble, Spec., Col. 4, lines 47-52. The present invention does not apply to bats having solid wood barrels. Since claim 1 is understood to require a hollow handle made of a metal or composite material, Tribble fails to teach or suggest every element of claim 1 of the present invention. Accordingly, Applicant respectfully requests that the rejection of claim 1 be withdrawn.

With respect to shock absorption, Tribble fails to teach or suggest a bat construction which will effectively reduce the shock felt by the hitter, and may actually increase this shock.

NEWYORK.463172.1

When a vibration is transferred from a (linearly) dense material to a less dense material, as in Tribble, the vibration amplitude increases. The locking pin in the Tribble construction will thus acquire a stronger vibration than that of the barrel, and even after the absorption of some of this vibration by the cushioning sleeve, the net result will be a shock that is at best only slightly reduced, and at worst actually increased compared to the shock imparted by a conventional wood bat. The present invention teaches the opposite effect. Specifically, the vibration amplitude will be reduced as it moves from the barrel to the stiffer and denser stem. See Spec., page 9. The smaller stem vibrations will then be effectively absorbed by the elastomer which separates the stem from the handle. The end result will be an almost complete elimination of the shock, as shown in Figures 7B, 8B and 8D of the Drawings.

Since Tribble fails to teach or suggest the shock absorption characteristic of the striking implement of claim 1 of the present invention, Applicant respectfully requests that the rejection of claim 1 be withdrawn.

Dependent claims 2,3 and 6-10 ultimately depend from independent claim 1. Applicant respectfully submits that since claim 1 is believed to be patentable for the reasons provided above, claims 2,3 and 6-10 are allowable as depending from a patentable base claim.

**35 U.S.C. §103(a) Rejection:**

Claim 11 is rejected as being unpatentable over Tribble in view of Lincoln. Claim 11 depends from claim 9. Applicant respectfully submits that since claim 9 is believed to be patentable for the reasons indicated above, claim 11 is allowable as depending from a patentable base claim.

**Objection:**

Claims 4 and 5 are objected to as being dependent upon a rejected base claim. Claims 4 and 5 depend from claim 3. Applicant respectfully submits that since claim 3 is believed to be patentable for the reasons provided above, claims 4 and 5 are allowable as depending from a patentable base claim.

Applicant therefore respectfully requests that the rejections and objections be withdrawn and the claims be passed to issuance.

CONCLUSION

In view of the foregoing remarks, Applicant submits that this application is in condition for allowance and early favorable action is solicited.

The Commissioner is hereby authorized to charge any additional fees that may be required for this response, or credit any overpayment to Deposit Account No. 50-1628.

In the event that an extension of time may be required, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to Deposit Account No. 50-1628.

If the Examiner determines that anything is necessary to place the application in better condition for allowance which Examiner believes can be handled via telephone, Applicant respectfully requests that Examiner contact the undersigned attorney at (212) 632-8435. The undersigned may also be contacted by e-mail at [mwaldbaum@salans.com](mailto:mwaldbaum@salans.com).

Respectfully submitted,



Maxim H. Waldbaum  
Registration No. 26,244  
Attorney for Applicant(s)

KW

NEWYORK.463172.1